

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CV-275-M

NATIONAL COATING & SUPPLIES,)
INC.; and SINGLE SOURCE, INC.,)
)
Plaintiffs,)
)
v.)
)
VALLEY FORGE INSURANCE)
COMPANY,)
)
Defendant.)

ORDER

This matter is before the Court on Defendant’s “Consent Motion for Extension of Time to Answer or Otherwise Plead to Plaintiffs’ Amended Complaint.” [DE-17.] The Court ACCEPTS Plaintiffs’ Amended Complaint [DE-16] as properly filed as of right under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, GRANTS the consent motion for an extension of time [DE-17], and DENIES as MOOT the pending motion to dismiss [DE-13].

I. Amended Complaint

As an initial matter, Plaintiffs’ Amended Complaint was properly filed as of right under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. Under Rule 15(a)(1), a party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a)(1). Here, the pleading at issue is a complaint, which requires a responsive pleading, see, e.g., *Villery v. D.C.*, 277 F.R.D. 218, 219 (D.D.C. 2011) (“A complaint is a pleading to which a responsive pleading is required.”), and it may therefore be amended once as a matter of course under Rule 15(a)(1)(B) (“if the pleading is one to which a responsive pleading is required”). Under Rule 15(a)(1)(B), Plaintiffs had “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). Defendant has not filed an answer, but did file a motion to dismiss pursuant to Rule 12(b)(6) on July 24, 2020. [DE-13.] Plaintiffs filed their Amended Complaint on August 14, 2020, the twenty-first day after being served with Defendant’s motion under Rule 12(b), within the time limit prescribed by Rule 15(a)(1)(B). Accordingly, Plaintiffs properly amended their complaint as of right. See *JTH Tax, Inc. v. Williams*, No. 2:18CV26, 2018 WL 10471107, at *1 (E.D. Va. Apr. 4, 2018) (“Rule 15(a)(1)(A) is inapplicable” where the amended pleading was filed “more than twenty-one (21) days” after the original pleading, but the amended pleading “is [instead] properly considered an amendment as a matter of course pursuant to Rule 15(a)(1)(B)” when it was filed “within twenty-one (21) days from service of the [] Motion to Dismiss”).

II. Defendant’s Motion for an Extension of Time to Respond to the Amended Complaint

Having reviewed the motion for an extension of time [DE-17], and with the consent of Plaintiffs, the Court finds that good cause exists to extend Defendant’s deadline to serve an answer or otherwise respond to Plaintiffs’ Amended Complaint.

III. Motion to Dismiss


It is well settled that the filing of an amended complaint renders the current complaint inoperative, *Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001) (“The general rule . . . is that an amended pleading supersedes the original pleading, rendering the original pleading of no effect.”), and that any motions directed at the superseded pleading must be denied as moot, *JTH Tax, Inc.*, 2018 WL 10471107, at *2 (denying, in light of amended pleading, motion to dismiss as moot); *Parsons v. North Carolina Dep’t of Revenue*, No. 5:18-cv-452-FL, 2019 WL 2181913, at *2 (E.D.N.C. May 20, 2019) (“Where an amended complaint has been filed with leave of court, motions to dismiss earlier complaints are denied as moot.”). Accordingly, the pending motion to dismiss [DE-13] is DENIED as MOOT.

IV. Conclusion

For the foregoing reasons, the Court finds that the Amended Complaint [DE-16] was properly filed as of right under Rule 15(a)(1)(B), and, in light of the new, operative pleading, the pending motion to dismiss [DE-13] is DENIED as MOOT.

The Court also GRANTS the consent motion for an extension of time to respond to the Amended Complaint. [DE-17.] Defendant shall have up to and including September 11, 2020, to serve an answer or otherwise respond to Plaintiffs’ Amended Complaint.

SO ORDERED, this the 25th day of August, 2020.


RICHARD E. MYERS II
UNITED STATES DISTRICT JUDGE